SS SAW

v.

SIEW HEEN YUEN & ORS;
SIEW BOON HONG & ORS (INTERVENERS)

COURT OF APPEAL, PUTRAJAYA
ZALEHA ZAHARI JCA
ABDULL HAMID EMBONG JCA
SULONG MATJERAIE JCA
[CIVIL APPEAL NO: W-02-200-2001]
8 OCTOBER 2008

LANDLORD AND TENANT: *Tenancy - Determination - Appeal against payment of compensation ordered to tenants of premises - Whether premises rent controlled - Whether tenancy coupled with interest - Whether tenancy coupled with equity - Whether compensation rightfully ordered by learned judge*

The plaintiff (the appellant herein) obtained judgment against the defendants (the respondents herein) to deliver vacant possession of premises erected on the plaintiff's lands ('the said lands') subject to payment of compensation to the defendants. The plaintiff now appealed against the payment of compensation that was ordered, *ie,* to the original 43 defendants named in the statement of claim as well as to 23 interveners/defendants who were later made parties to the case. The interveners/defendants were subsequent purchasers of some of the premises that were erected on the said lands. They were made party to the proceedings more than 25 years after the plaintiff commenced proceedings against the original 43 defendants.

The facts showed that the plaintiff obtained the title to the said lands from his father who purchased the said lands with the premises thereon. The 43 defendants were monthly tenants who paid the plaintiff a ground rent of RM45.90 each. Payment of the rates, taxes and assessments to the appropriate authorities were borne by the respective defendants. In defence, it was alleged that (1) the premises were rent controlled premises subject to the Control of Rent Act 1966; (2) there was a tenancy coupled with interest by reason of the fact that the defendants purchased the respective premises and/or by reason of them having paid the assessments, rates and taxes thereof; (3) the plaintiff consented to

A the issuance of the yearly municipal licence to retain a temporary building on the said lands. As for the interveners/defendants, it was argued that they had acquired a tenancy coupled with an equity on the basis that the plaintiff by his conduct, expressly or by implication, permitted and/or acquiesced to their payments of B assessments to the appropriate authorities and was estopped from denying that they had acquired such an equity.

Held (allowing the appeal)
Per Zaleha Zahari JCA delivering the judgment of the court:

C **(1)** It was incumbent upon the relevant defendants to prove that the premises of which they allege to have an interest in was constructed on or before 31 January 1948. There was no such evidence before the court. The said premises were constructed in 1949. The Rent Control Act 1966 was D therefore inapplicable. The trial judge clearly erred in ordering the plaintiff to pay compensation to the relevant defendants on the basis that they had acquired an equitable interest. (paras 53 & 54)

E **(2)** There was no evidence of the defendants and the interveners/ defendants having expended money on the inducement or encouragement of the plaintiff. The dealings, if any, were all with the previous landowner and not the plaintiff. The two defendants who had testified no longer lived in their respective F premises and admitted to renting them out and enjoying rental as contrasted with the position of the plaintiff who received no rental subsequent to the issuance of the Notice to Quit to the defendants. Further, the 1st intervener knew that the plaintiff had commenced proceedings to recover possession. G (paras 58)

(3) The established fact is that the buildings were temporary buildings. The temporary building licences issued were on the application by the house owners. The defendants and H interveners/defendants knew its validity was for a period of one year only. In any event the temporary building licence was revocable. It was issued subject to the condition that the permit issued was subject to the landowner's consent to the continued occupation of the said lands. In the present case, I the plaintiff had given the required one-month's notice. (paras 59)

(4) The plaintiff made it clear in his letter to all owners of the premises that their building was built around 1950 under certain agreements and that the period for the building to remain had expired long ago. When the notices to quit were issued, it meant that the consent was withdrawn. The payment of rates and assessment were incidental to the occupation of the premises imposed by and payable to the local authority. (paras 60)

(5) By reason of the fact that the occupiers occupied the said premises since 1950, the equity claimed was satisfied by reason of that long occupation. The rents paid to the plaintiff were a paltry sum of RM49.50, with some enjoying rents from the premises and living elsewhere. It would be unjust and inequitable for the defendants to be paid any compensation. If there was any equity, it should be invoked in favour of the plaintiff. (para 61)

Bahasa Malaysia *Translation Of Headnotes*

Plaintif (perayu di sini) memperoleh penghakiman terhadap defendan-defendan (responden-responden di sini) supaya milikan kosong premis-premis yang didirikan di atas tanah plaintif ('tanah tersebut') diserahkan kepada plaintif tertakluk kepada pembayaran pampasan kepada defendan-defendan. Plaintif kini merayu terhadap perintah membayar pampasan kepada 43 defendan asal yang dinamakan dalam pernyataan tuntutan serta 23 pencelah-pencelah/defendan-defendan yang dijadikan pihak kepada kes kemudiannya. Pencelah-pencelah/defendan-defendan berkenaan adalah pembeli kepada sebahagian premis-premis yang didirikan di atas tanah tersebut. Mereka dijadikan pihak kepada prosiding lebih dari 25 tahun setelah plaintif memulakan prosidingnya terhadap 43 defendan-defendan asal di atas.

Fakta menunjukkan bahawa plaintif mendapat hakmilik tanah tersebut dari bapanya yang membeli tanah tersebut beserta dengan premis-premis di atasnya. Semua 43 defendan di atas adalah penyewa bulanan premis-premis dan mereka telah membayar sewa tanah kepada plaintif sebanyak RM45.90 seorang. Selain itu, mereka juga bertanggungan untuk membayar taksiran-taksiran, cukai-cukai dan penilaian-penilaian kepada pihak berkuasa. Dalam pembelaan mereka, mereka mengatakan bahawa: (1) premis-premis adalah premis yang dikawal sewanya dan tertakluk kepada Akta

A Kawalan Sewa 1966; (2) wujud tenansi beserta kepentingan di sini disebabkan fakta bahawa mereka telah membeli premis-premis tersebut dan/atau disebabkan mereka telah membayar penilaian, taksiran dan cukai di atas; (3) plaintif telah bersetuju dengan pengeluaran lesen tahunan oleh majlis perbandaran membenarkan
B bangunan sementara di atas tanah tersebut. Berhubung pencelah-pencelah/defendan-defendan, ianya dihujahkan bahawa mereka telah mendapat tenansi beserta dengan ekuiti disebabkan plaintif, melalui kelakuannya, sama ada secara nyata atau tersirat, telah membenarkan dan/atau tidak membantah pembayaran-pembayaran
C taksiran yang dibuat oleh mereka kepada pihak berkuasa-pihak berkuasa tertentu dan dengan itu diestop dari menafikan bahawa mereka telah memperoleh ekuiti yang dikatakan.

Diputuskan (membenarkan rayuan)

D **Oleh Zaleha Zahari HMR menyampaikan penghakiman mahkamah:**

(1) Adalah menjadi tanggungjawab defendan-defendan yang berkenaan untuk membuktikan bahawa premis-premis di mana mereka mendakwa mempunyai kepentingan di dalamnya telah
E dibina pada atau sebelum 31 Januari 1948. Tidak ada bukti sedemikian di hadapan mahkamah. Premis tersebut dibina pada tahun 1949. Oleh itu Akta Kawalan Sewa 1966 adalah tidak terpakai. Hakim bicara jelas khilaf dalam memerintahkan plaintif
F membayar pampasan kepada defendan-defendan berkenaan atas alasan bahawa mereka telah memperoleh satu kepentingan berekuiti.

(2) Tidak terdapat keterangan bahawa defendan-defendan dan pencelah-pencelah/defendan-defendan telah membelanja wang
G ekoran inducement atau pengaruh plaintif. Apa jua urusan, jika pun ada, adalah dengan pemilik tanah terdahulu dan bukannya dengan plaintif. Kedua-dua defendan yang memberi keterangan tidak lagi tinggal di premis mereka dan malah mengakui telah menyewakan premis-premis berkenaan dan mengutip sewa-
H sewanya, di mana ini bertentangan dengan kedudukan plaintif yang tidak menerima apa-apa sewa selepas pengeluaran Notis Keluar kepada defendan-defendan. Selain itu, pencelah pertama tahu bahawa plaintif telah pun memulakan prosiding bagi mendapatkan milikan.

I

(3) Fakta yang terbukti adalah bahawa bangunan-bangunan adalah bangunan sementara. Lesen bangunan sementara yang dikeluarkan adalah ekoran permohonan oleh pemilik-pemilik rumah. Defendan-defendan serta pencelah-pencelah/defendan-defendan mengetahui bahawa tempoh sahnya adalah untuk satu tahun sahaja. Apapun, lesen bangunan sementara tersebut boleh dibatalkan. Ia tertakluk kepada syarat bahawa kebenaran yang diberikan adalah bergantung kepada pemilik tanah memberi persetujuan berterusan terhadap penghunian tanah tersebut. Dalam kes semasa, plaintif telah pun memberi notis sebulan seperti yang syaratkan.

(4) Plaintif dalam suratnya telah menjelaskan kepada semua pemilik premis bahawa bangunan mereka telah dibina sekitar tahun 1950 di bawah beberapa perjanjian tertentu dan bahawa tempoh bagi bangunan terus berada di situ telah lama luput. Bilamana notis untuk keluar dikeluarkan, ianya bermakna persetujuan telah ditarik balik. Pembayaran taksiran dan penilaian adalah incidental kepada penghunian premis yang ditetapkan oleh dan kena dibayar kepada pihak berkuasa tempatan.

(5) Mengambilkira fakta bahawa penghuni-penghuni telah mendiami premis-premis sejak tahun 1950, tuntutan ekuiti adalah dipenuhi disebabkan penghunian yang panjang tersebut. Namun, sewa yang dibayar kepada plaintif cumalah satu jumlah yang kecil, iaitu RM49.50, sedangkan sebahagian penghuni mendapat pulangan sewa dari premis-premis tetapi tinggal ditempat-tempat lain. Oleh itu, adalah tidak adil dan tidak berekuiti untuk defendan-defendan dibayarkan pampasan. Jikapun terdapat ekuiti, ianya harus dilaksanakan untuk manfaat plaintif.

Case(s) referred to:
Devi v. Francis [1968] 1 LNS 34 ***(refd)***
Siew Soon Wah & Ors v. Yong Tong Hong [1973] 1 LNS 137 ***(refd)***
Ramsden v. Dyson [1866] LR1 HL 129 ***(refd)***

Legislation referred to:
National Land Code, s. 221(3)

For the appellant - Datuk DP Naban (Joseph Yeo & Halina Jael Abu Bakar with him); M/s Joseph Yeo

For the respondents No 2, 6, 12, 14, 26, 28, 31, 38, 40 & 42) - Dennis Xavier; M/s Xavier Norhaslinda & Assoc

For the interveners/respondent - Prasad Abraham (Veronica Dominic with him); M/s Prasad Abraham & Assoc

[Appeal from High Court, Civil Suit No: 145-1975]

Reported by Usha Thiagarajah

JUDGMENT

Zaleha Zahari JCA:

[1] On 24 April 2008 we allowed the plaintiff's (appellant before us) appeal with costs. Our reasons are as follows:

[2] In this judgment parties will be cited as they appear in the court below.

[3] The High Court Judge had at the end of trial on 16 February 2001 entered judgment in favour of the plaintiff and directed the defendants to deliver vacant possession of the lands in issue subject however to conditions. The order *inter alia* states:

> ADALAH DIPERINTAHKAN bahawa Plaintiff hendaklah diberi milikan kosong tanah-tanah Geran No. 36507, 36508, 36509, 36510 and 36511 untuk Lot 7, 8, 9, 10 dan 11 kesemuanya di Seksyen 86A, Bandar Kuala Lumpur (dahulunya C.T. No. 8551, 8552, 8553, 8554 and 8555) di atas syarat Plaintif membuat pampasan yang di persetujui atau ditaksir oleh Penolong Kanan Pendaftar DAN ADALAH SELANJUTNYA DIPERINTAHKAN bahawa Defendan-Defendan memberi milikan kosong tanah-tanah tersebut di dalam tempoh tiga (3) bulan dari tarikh penerimaan pampasan tersebut DAN ADALAH DIPERINTAHKAN bahawa pihak-pihak menanggung kos masing-masing.

[4] In a nutshell the complaint of the plaintiff in this appeal is against the order of vacant possession being conditional upon payment of compensation (to be assessed) to the original forty-three defendants named in the original statement of claim, as well as to the twenty-three interveners/defendants who were made parties to the proceedings (after trial had commenced) pursuant to

leave of court dated 4 May 2000 ie, more than twenty-five years after he commenced proceedings against the original forty-three defendants.

Background

[5] The background facts are these. The subject matter of the suit are five lots of land held under Certificate Title No. 8551, 8552, 8553, 8554 and 8555 for Lots Nos. 7, 8, 9, 10 and 11 in Section 86A, Town of Kuala Lumpur now held under Grant No. 36507, 36508, 36509, 36510 and 36511 ("the said lands") upon which forty-three premises were erected ie, Nos. 72, 72A, 72B, 72C, 72D, 72E, 72F, 72G, 72H, 72I, 72J, 72K, 74, 74A, 74B, 74C, 74D, 74E, 74F, 74G, 74H, 74I and 74J Jalan Beserah and Nos. 76, 76A, 76B, 76C, 76D, 76E, 78, 78A, 78B, 78C, 78D, 78E, 80, 80A, 80B, 80C, 80D, 80E, 80F and 80G, Jalan Tembeling ("the said premises").

[6] The title of the said lands (exh. P14) shows that the said lands were transferred from Lim Yoke Ching (the previous land owner) to Saw Kim Thiat (the plaintiff's father (PW1)) on 20 April 1961. On 10 October 1966 the said lands were then transferred into the name of Saw Shiou Syong, the plaintiff in this case. It is not in issue that when PW1 purchased the said lands, the said premises were already in existence. It is common ground that the forty-three defendants were monthly tenants and paid the plaintiff ground rent of RM45.90 a month. The rates and assessments in respect of respective premises to Dewan Bandaraya Kuala Lumpur (DBKL) were borne by the respective tenants.

[7] The plaintiff had through his solicitors, Tetuan Dato' S.M. Yong & Co, issued 43 notices to quit all dated 22 August 1974 (P6) to the original forty-three defendants by which notice the defendants were required to deliver vacant possession of the said lands on 30 September 1974, or on the expiration of the next complete month of the tenancy subsequent to receipt of the notice to quit. The notice to quit specified that should the defendants fail to do so, a claim would be filed without any further notice.

[8] The original forty-three defendants reply to the notice to quit *vide* their solicitor's (Syarikat Lek Yan) letter (exh. P8), was they were unable to comply with the notice to quit as the said premises were controlled premises subject to the Control of Rent Act 1966.

A **The Claim**

[9] When the forty-three defendants failed to vacate and deliver vacant possession of the said lands by the due date, the plaintiff commenced proceedings. By writ of summons dated 24 January
B 1975 filed by Tetuan Joseph Yeo, the plaintiff applied for an order of vacant possession of the said lands. According to the amended statement of claim dated 1 March 1975 the plaintiff prayed for the following orders: firstly, that the forty-three defendants forthwith deliver vacant possession of the said lands; secondly, that each of
C the defendants do pay the plaintiff double rent at the rate of RM91.80 per month from the date his/her tenancy was determined to date of vacant possession, as well as costs.

The Defence

D *(a) The Original Statement Of Defence Of The Forty-three Defendants*

[10] On 15 March 1975 a statement of defence was filed by Syarikat Lek Yan on behalf of the original forty-three defendants. The defence raised was a straight forward one, that the said
E premises were controlled premises subject to the Control of Rent Act 1966 and they claim protection under the said Act.

(b) The Amended Defence Of The 2nd, 6th, 12th, 14th, 26th, 28th, 31st, 38th, 40th And 42nd Defendant

F **[11]** Ten of the original forty-three defendants (ie, Lim Yew Lai (2nd defendant), Chin Ho (f) (6th defendant), Ng Soh Wah (12th defendant), Tan Pek Im (14th defendant), S.V. Sarma (26th defendant), Fan Yoke Ying (f) (28th Defendant), Chui Sew Mo (31st defendant), Yap Biow Hwee (38th defendant), Cheen Yit (f)
G (40th defendant), and Chua Yoke Hwe (42nd defendant)) were subsequently represented by Tetuan Xavier Norhaslinda & Associates.

[12] Messrs Xavier Norhaslinda & Associates filed an amended
H statement of defence on their behalf to that filed by Syarikat Lek Yan dated 5 May 2000 (ie, 20 years two months after the filing of the original statement of defence). An additional ground was inserted into their defence. The ten defendants represented by Tetuan Xavier Norhaslinda & Associates claimed that they had all
I acquired a tenancy coupled with an interest by reason of having purchased their respective premises and/or by reason of having

paid the assessments, rates and taxes in respect of the said premises. Further, by reason of the plaintiff having consented to the issuance of the yearly Municipal Licence for permission to them to retain a temporary building on the said lands.

[13] Pausing here for a moment, consequential upon this development, the thirty-three defendants not represented by Tetuan Xavier Norhaslinda & Associates, continued to be represented by Syarikat Lek Yan. We observe to note from the record of proceedings that at each and every hearing date the court enquired and placed on record that Tetuan Syarikat Lek Yan had been informed of the hearing date in question and that no one appeared on behalf of these thirty-three Defendants notwithstanding the fact of having been notified of the same.

The Interveners' Defence

[14] Leave to intervene was granted by the court to the twenty-three interveners on 4 May 2000 and were made parties to the proceedings as defendants. The interveners/defendants were represented by Tetuan Prasad Abraham & Associates.

[15] By the interveners' statement of defence dated 5 May 2000 (ie, the same date of the amended defence of the ten defendants represented Tetuan Xavier Norhaslinda & Associates) the interveners claimed to be subsequent purchasers of the following premises, ie, No. 72, 72B, 72C, 72D, 72E, 72F, 72G, 72H, 72I, 72J, 74, 74B, 74C, 74D, 74E, 74J, 76, 76A, 76C, 76E, 78B, 78C, 78D, 78E, 80, 80A and 80E respectively.

[16] The interveners/defendants then alleged that they had acquired a tenancy coupled with an equity or an equitable estoppel on the basis that the plaintiff had by his conduct, expressly or by implication, permitted and/or acquiesced in them paying the assessments to the appropriate authorities, and is estopped from denying that they had acquired such an equity.

[17] The interveners/defendants also contended that the notice to quit issued by the plaintiff was invalid by reason of the interveners/defendants being the holder of a valid Municipal Licence for possession to retain a temporary building for the period 16 April 1974 to 15 April 1975. According to them the plaintiff had by his conduct consented to the issuance of the said licence. The

A interveners/defendants also contended that the plaintiff had encouraged the interveners/defendants to purchase their respective premises.

The Evidence

B *The Plaintiff's Case*

[18] The principal witness, Saw Kiam Kiat, the plaintiff's father (PW1) testified that he purchased the said lands in 1961 from Lin Yoke Ching. At the time of purchase of the said lands, the C premises which are the subject matter of this suit were already in existence. PW1 believed that the said premises built on the said lands were constructed sometime in the 1950's. In 1966 he transferred the said lands to the plaintiff, his son, Saw Shiou Shyong. Be that as it may, he continued to administer the said D lands after the said lands were transferred into the plaintiff's name pursuant to a power of attorney executed in his favour.

[19] He received rent of RM10 a month initially, which was subsequently increased to RM45.90 a month from the forty-three E defendants who were in occupation of the said premises.

[20] Tetuan Dato' S.M. Yong & Co, the plaintiff's solicitors issued notices to quit all dated 22 August 1974 (P6) to the original forty-three defendants by which notice they were required F to deliver vacant possession of the said lands on 30 September 1974, or on the expiration of the next complete month of the tenancy subsequent to receipt of the notice to quit. The notice to quit specified that should the defendants fail to do so, a claim would be filed without any further notice. They failed to vacate G the said lands.

[21] SP1 testified that subsequent to the issuance of the notice to quit he did not receive any rental from the defendants neither had he entered into any agreement with any of them for them to transfer or sell any of the premises on the said lands to any other H party.

The Ten Defendants Represented By Tetuan Xavier Norhaslinda & Associates)

I **[22]** The protection claimed by these ten defendants under the Control of Rent Act was abandoned during the course of trial.

[23] Three witnesses were called to testify, Mohd Saleh bin Kos (an officer from DBKL (DW2)) and two of the defendants represented by Tetuan Xavier Norhaslinda & Associates, ie, Saraswathi Violet Sarma, (the 26th defendant (DW1)) and Yap Ah Kow @ Yap Biow Hwee (the 38th defendant (DW3)). Their testimony may be summarized as follows.

[24] Mohd Saleh bin Kos (DW2), testified that all of 43 premises built on the said lands were temporary buildings. Temporary Occupation Licences had been issued to the occupier of the 43 premises on the said lands from 1949 up to 15.4.1975. According to DW2 a Temporary Building License would only be issued if there was no objection from the landlord. DBKL did not issue any Temporary Building License after 15 April 1975.

[25] The 26th defendant, Saraswathi Violet Sarma, (DW1) testified that she is the owner of premise No. 76B. Her father had purchased the said premises from the previous owner for her in 1950 for the sum of RM4,500. She is no longer residing in premise No. 76B which has been rented. She now resides in Kepong. The rates and assessments were paid by her.

[26] She was in possession of a Temporary Building Licence to retain a temporary building issued by DBKL for the period 16 April 1974 to 15 April 1975 when the notice to quit was served. The previous landlord had informed her that she could stay on this premise permanently, and if there was a reversion, it would be by mutual agreement which would include compensation as well as a reasonable time to relocate.

[27] Yap Ah Kow @ Yap Biow Hwee (the 38th defendant (DW3)) at trial states that he resides at Taman Bukit Desa. He testified that he is the owner of premise No. 80B. His father, Yap Chiew Lian, had purchased the said premise for him in 1950 from the previous landowner for RM4,500. A Temporary Building Licence was issued by the Kuala Lumpur Municipality for permission to retain a temporary building from year to year. In August 1974, when the notice to quit was served, there was a Temporary Building Licence issued for the period 16 April 1974 to 15 April 1975. He paid the rates to the Kuala Lumpur Municipality and assessments to DBKL in respect of this premise, the last being on 29 February 2000. When his father purchased this premise the expectation created by the previous landowner was that they could stay there for as long as mutually agreed.

The Interveners/Defendants

[28] The interveners' case rests on the testimony of three witnesses, ie, Lai Sam Choon (the husband of Lee Geok Lan (the 11th intervener (DW4))), Siew Boon Hong (the 1st intervener (DW5)) and Ang Ee Sing (the 3rd intervener (DW6)) whose testimony are as follows:

[29] Lai Sam Choon (DW4), states that he resides in Taman Nirwana. He was occupying premise No. 74E when the notice to quit was served in August 1994. His wife purchased premise No. 74E in the 1970's. Cheques towards rental submitted to the plaintiff's solicitors, Messrs Dato' S.M. Yong subsequent to issuance of the notice to quit was returned.

[30] Siew Boon Hong @ Shandra, the 1st intervener (DW5), testified that he is the owner and occupier of premise No. 72. He moved into this premise in 1963. His father, Siew Heen Yuen @ Siew Swee Chaw (the 1st defendant is the original owner of premise No. 72). DW5 states that he purchased house No. 72 from his father on 11 July 1994 for RM25,000. He paid the said sum in six installments. He then spent RM20,000 improving this premise. In cross examination DW5 conceded that he did not have any supporting evidence to support payment of the RM25,000 purchase price nor of the RM20,000 incurred in improving this premise. DW5 also testified that the assessment for premise No. 72 was paid by him.

[31] Ang Ee Sing, the 3rd intervener (DW6) resides in premise No. 80. He earlier owned premise No. 72C but had swapped premise No. 72C with the owner of premise No. 80, Mah Moi @ Mah Yole Cheng, who is intervener No. 21 in this case. Premise No. 72C was occupied by Mah Moi. This premise has since been rented to others.

[32] DW6 testified that he moved in premise No. 80 in the 1960's and is still staying there. He paid a purchase price of RM3,000 for this premise on 15 October 1973, spent RM20,000 in improving the house, and paid the quit rent. The plaintiff refused to accept rental from him as well as from the owners of the other premises on the said lands subsequent to issuance of the notice to quit.

The Judge's Findings

[33] Based on the evidence summarized above, the High Court Judge held that in the absence of any evidence of any attempt by the previous landowner to evict the defendants from the said lands, he considered it fair to assume that the said premises on the said lands had been built with the encouragement and approval of the previous landowner.

[34] The High Court Judge then ruled that the defendants (which term would include the defendants/interveners) had acquired a tenancy coupled with equity. He then made a finding that the plaintiff was entitled to the possession of the said lands upon payment of compensation to be assessed by the registrar and directed the defendants to deliver vacant possession of the said lands within three months from the date of payment of compensation.

[35] The position as at the date of hearing of this appeal is that the defendants and interveners/defendants had yet to vacate the said lands.

[36] The issue for determination in this appeal whether the trial judge was right in finding that the ten defendants represented by Tetuan Xavier Norhaslinda & Associates and the thirty-three defendants represented by Syarikat Lek Yan who did not appear at trial, as well as the interveners/defendants were all entitled be paid compensation to be assessed.

The Submissions

[37] In argument before us the appellant's counsel stressed the fact that the factual position of each defendant and each intervener/defendant were different. There is nothing to support the factual position that the position of all of the defendants and interveners/defendants were identical. The evidence given by the 26th defendant (DW1) and 38th defendant (DW3) was on their own behalf and not on behalf of the other forty-one defendants who had not testified. In this situation he submitted that in the absence of any evidence on behalf of these other forty-one defendants the trial judge had erred in finding that these forty-one defendants had acquired a tenancy coupled with equity. He stressed the fact that the 26th defendant was no longer staying

A on premise Lot 76B but is renting out the same. There cannot be a tenancy coupled with equity by reason of her non-occupation of that premise. In this situation the plaintiff is entitled to vacant possession in respect of the said premises as against all of them without conditions. The trial judge therefore erred in ordering the B plaintiff to pay compensation to those defendants and the defendants/interveners who had not testified at trial.

[38] As for the 38th defendant who claimed to have an interest in premise No. 80B, he too was no longer occupying this premise. C As to the alleged purchase by the 38th defendant of premise No. 80B from his father, he urged the court to note that this was not an arm's length transaction and was but a bare statement unsupported by any documentary evidence.

D **[39]** There was no evidence that the ten defendants represented by Tetuan Messrs Xavier Norhaslinda & Associates had expended money on the encouragement of the plaintiff. The ten defendants represented by Tetuan Messrs Xavier Norhaslinda & Associates have accordingly failed to show that an equity had been created in their respective favour. E

[40] Other than the plaintiff collecting rent on a monthly basis, prior to the issuance of the notice to quit, there was no evidence to show that any of the defendant had been encouraged by the plaintiff to purchase or renovate their premises in the expectation F that they would be allowed to remain there. It was important to bear in mind that the defendants have not paid any ground rent to the plaintiff since the issuance of the notice to quit way back in 1974.

G **[41]** As for the interveners/defendants, he highlighted the fact that DW4's, (the 11th intervener's husband) residential address at trial was "No. 55 Taman Nirwana". By this it is to be inferred that DW4 and the 11th intervener too were no longer in occupation of premise No. 74E.

H **[42]** As to the 1st Intervener's alleged purchase of premise No. 72 on 11 July 1994 from his father, by reason of the fact that this alleged purchase took place 20 years after the plaintiff had issued the notice to quit to the defendants, there certainly cannot be an equity in the 1st intervener's favour when there was no I action or permission or representation by the plaintiff or the

plaintiff's predecessor, to the 1st intervener. Further, there is no proof of payment of the purchase price or the renovation made by the 1st intervener.

[43] As for the 3rd Intervener, he had in cross-examination admitted that he did not make any payment for the purchase price of RM3,000 for premise No. 80. As to the alleged expenditure of RM20,000 to renovate this premise, again there is no supporting documentation that such an expenditure had in fact been incurred.

[44] The High Court Judge had also failed to take into consideration the fact that the buildings on the said lands were of a temporary nature and that only a nominal ground rent of RM45.90 per month was levied. The licence issued for temporary building for only for a period of one year which licence was revocable upon giving due notice. It is common ground that no Temporary Occupation Licence was issued by DBKL after 15 April 1975.

[45] The true position is that there is no tenancy coupled with equity but only a monthly tenancy terminable with one month's notice which tenancy had been validly terminated by the notices to quit. As to the payment of assessment by the tenant concerned, this was but an incident of the occupation of the respective premises imposed by and payable to the local authority.

[46] Even if one were to accept that the defendants and defendants/interveners had acquired an equity, the appellant's counsel submitted that that equity had been satisfied and the plaintiff was under no obligation to pay any compensation to the defendants and interveners/defendants as s. 221(3) of the National Land Code provides that the maximum period for lease of part of a land is only thirty (30) years. In *Siew Soon Wah & Ors v. Yong Tong Hong* [1973] 1 LNS 137, the Privy Council recognised that the landlord in that case did not have the power to grant to the respondent a lease for more than thirty (30) years. In this present case the said lands had been occupied since the early 1950's. The appellant issued the notices to quit in 1974, approximately 24 years later. Although the notices to quit was issued before the expiry of the thirty (30) year period, the defendants or the defendants/Interveners had continued to occupy the said lands (or

was in control of it and rented it out) without paying any ground rent to the plaintiff. Since issuance of the notices to quit in 1974 until the date of decision in the High Court (ie, 16 February 2001) the defendants have been allowed to occupy the said lands rental free. In other words the defendants have been in occupation of the said land for approximately fifty-one years.

[47] Notwithstanding the fact that there may have been a change of occupation between the previous occupiers and the present defendants and interveners/defendants, the equitable rights of the previous occupiers have been transmitted to them. Whatever equitable rights that were acquired by them from their respective predecessors (if any) would be for the balance of the thirty (30) years. In this present case, the defendants or the defendants/interveners had occupied the said lands for at least 51 years, far exceeding the maximum period of tenancy for part of land under s. 221(3) of the National Land Code. The defendants and the interveners/defendants cannot therefore be heard to state that they have suffered loss. Equity has been satisfied upon the expiration of the 30 years period. On this ground the defendants/interveners are not entitled to any compensation from the plaintiff.

[48] Encik Dennis Xavier on behalf of the ten defendants whom he represents submitted that the notices to quit were bad in law. The plaintiff must give reasonable notice and satisfy the equity by paying reasonable compensation to the defendants. On the facts of this case the defendants', (particularly the ten defendants whom he represents) and the interveners, had a tenancy coupled with an equity (equitable estoppel) on the basis that they had purchased their respective premises, paid the assessment, rates and taxes, and by reason of the plaintiff having consented to the issuance of the licence to retain a temporary building.

[49] Encik Prasad, the interveners' counsel's submitted that the plaintiff was aware of the arrangements giving rise to the equity in favour of the interveners/defendants which had existed before the plaintiff became the registered owner. In furtherance of those arrangements, the plaintiff had induced the defendants and the interveners/defendants to pay an increased ground rent in the expectation that the plaintiff would not take the said lands back for development.

Decision

[50] We are of the view that consideration must necessarily be taken of the issues raised in the pleadings and what transpired at trial. We propose to consider the plaintiff's claim separately in three parts, firstly, that as against the original thirty-three defendants who continued to be represented by Syarikat Lek Yan; secondly, that as against the ten defendants represented by Messrs Xavier Norhaslinda & Associates; and thirdly, that as against the interveners/defendants.

[51] As far as the thirty-three defendants represented by Syarikat Lek Yan are concerned, their case as the pleadings stood at trial was that the premises of which they are in occupation of were protected under the Control of Rent Act and nothing else. The defence makes no mention of any of them having acquired a tenancy coupled with an equity.

[52] It is trite law that parties are bound by their pleadings. A judgment should be based on the issues pleaded. The learned judge is not entitled to decide the suit on an issue which has not been raised in the defence. For the court to make a decision against a party by giving effect to an issue which these defendants had not raised in their pleadings under our adversary system of procedure has the effect of depriving the plaintiff of the benefit of one of the most fundamental right of natural justice, the right to be informed of any point that is going to be relied upon, and that he be given the opportunity of stating what his answer to that issue is.

[53] Further, as far as these thirty-three defendants are concerned, he who asserts must prove. It was incumbent upon these thirty-three defendants to prove that the premises of which they allege to have an interest in was constructed on or before 31 January 1948. There was no such evidence before the court as none of these thirty-three defendants appeared to give evidence. A perusal of the record however shows evidence to the contrary. According to DW4 all of the forty-three premises on the said lands had been constructed in 1949. The Rent Control Act is accordingly not applicable to the premises of which these thirty-three defendants were in occupation of.

[54] The trial judge had clearly in these circumstances erred in ordering the plaintiff to pay compensation to these thirty-three defendants on the basis of having acquired an equitable interest.

[55] Before we state our ruling on the issue whether the ten defendants represented by Mr. Xavier, as well as the twenty-three interveners/defendants, had acquired a tenancy coupled with an equity, it is necessary to state several significant facts. This is not a representative action. The two defendants and the three interveners/defendants who testified at trial did so on their own behalf, not on behalf of any other defendants or the other interveners/defendants. There is nothing on record of any agreement that the evidence given by these witnesses were on behalf of any other defendants, or the interveners/defendants.

[56] The law relating to a tenancy coupled with an equity or equitable estoppel is founded on the statement of Lord Kingsdown in *Ramsden v. Dyson* [1866] LR1 HL 129 which had been applied and adopted in Malaysia (See *Devi v. Francis* [1968] 1 LNS 34). The statement reads as follows:

> The rule of law applicable to the case appears to be this: If a man, under a verbal agreement with a landlord for a certain interest in land or, what amounts to the same thing, under an expectation, created or encouraged by the landlord, that he shall have a certain interest, takes possession of such land, with the consent of the landlord, and upon the faith of such promise or expectation, with the knowledge of the landlord, and without objection by him, lays out money upon the land, a court of equity will compel the landlord to give effect to such promise or expectation. This was the principle of the decision in *Gregory v. Mighell* 18 Ves. 328, and, as I conceive, is open to no doubt …
>
> If, on the other hand, a tenant being in possession of land, and knowing the nature and extent of his interest, lays out money upon it in the hope or expectation of an extended term or as allowance for expenditure, then, if such hope or expectation has not been created or encouraged by the landlord, the tenant has no claim which any court of law or equity can enforce. This was the principal of the decision in *Pillay v. Armitage* 12 Ves. 78, and like the decision in *Gregory v. Mighell*, seems founded on plain rules of reason and justice.

[57] Tenancy with equity or equitable estoppel thus only arises if there is evidence that the plaintiff had required any of the defendants or interveners/defendants or allowed them to expend money on the said lands under an expectation created or encouraged by him that they would be able to remain there. In such a situation the landowner is prevented from taking any action contrary to that expectation. In the event that a tenancy coupled with equity is established, the landowner must first satisfy that equity before he can recover the land.

[58] What is the evidence before the court? There is no evidence of the defendants nor the interveners/defendants having expended money on the inducement or encouragement of the plaintiff. The dealings if any, were all with the previous landowner, not the plaintiff. Of the two defendants who testified, defendant no. 26 (DW1) no longer lives in premises No. 76B. Likewise defendant no. 38 (DW3) also does not live in premise No. 80B. In fact these two defendants had admitted to renting out their respective premises and enjoying rental as contrasted with the position of the plaintiff, who received no rental subsequent to the issuance of the notice to quit. As for the evidence given by the interveners/ defendants, there is also no evidence of them being induced or encouraged by the plaintiff. In fact, in respect of premise No. 72, the 1st intervener knew that the plaintiff had commenced proceedings to recover possession.

[59] The established fact is that the buildings were temporary buildings. The temporary building licences were issued on the application by the house owners. The defendants and interveners/ defendants knew its validity is for a period of 1 year only. In any event the temporary building licence was revocable. It was issued subject to the condition, "This permit is issued subject to the landowner's consent to the continued occupation of the land". In the present case the plaintiff had given the required one month's notice.

[60] The plaintiff had made it clear in his letter to all owners of the premises in exh. P3 dated 27 May 1966 that "Your building was built around 1950 under certain agreements and the period for the building to remain has expired long ago." When the notices to quit were issued, it meant that the consent had been

withdrawn. We agree with the appellant counsel's submission that the payment of rates and assessment were but an incident of the occupation of the premises imposed by and payable to the local authority.

[61] We are also in agreement with the submission of the appellant's counsel that by reason the occupiers having occupied the said premises since 1950, the equity claimed has been satisfied by reason of this long occupation. The rents paid to the plaintiff was a paltry sum of RM49.50, with some enjoying rents from these premises and living elsewhere. In our view it would be injust and inequitable for these defendants to be paid any compensation. If there is any equity it should be invoked in favour of the plaintiff.

[62] To conclude, the appeal is allowed with costs. The High Court Judge's decision that vacant possession of the said lands be given to the plaintiff is affirmed. The order directing the plaintiff to pay compensation to be assessed against the defendants and the defendants/interveners is set aside. We further made an order directing them to vacate the said lands on or before 31 December 2008. The deposit to the appellant to account of taxed costs.